the maintenance of drains which is already the responsibility of the government, viz the branch drains on both sides of the public road and the main drains maintained by the drainage and irrigation department. In addition, Bertam Estate is within the Bertam Drainage Board Area which is a system of drainage to alleviate flooding in the area as the land is flat and also serves as a catchment area. The drainage and irrigation department is responsible to the Board on which sit the respondents. This responsibility also includes the maintenance of main drains in Bertam Estate. We are of the view that there is already sufficient infrastructure and co-ordination to meet the objects of the declaration herein and as such the declaration is superfluous at best. We would accordingly allow this part of the appeal, set aside the declaration and allow the appeal against the award of $27,200 for drains. For the reasons stated, we allow the appeal and set aside the order of the High Court in respect of:

(a) the payment of $27,200 for drains;
(b) the reimbursement of surveyor's and engineer's fees;
(c) costs; and
(d) the declaration.

The rate of interest on the excess is varied to 6% pa from 21 February 1980 to 19 January 1984 and at 8% pa from 20 January 1984 to date of payment. The cross-appeals in respect of (i) compensation for the land; and (ii) compensation for loss of crops are hereby dismissed. The respondents shall pay the costs of this appeal. Deposit to be refunded to the appellant.

Appeal allowed.

Solicitors: *Presgrave & Matthews.*

Reported by *Prof Ahmad Ibrahim*

Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application

SUPREME COURT (KUALA LUMPUR) — CIVIL APPLICATION NOS 12 AND 22 OF 1987
ABDUL HAMID LP, LEE HUN HOE CJ (BORNEO) AND GUNN CHIT TUAN SCJ
16 DECEMBER 1989

Civil Procedure— Contempt of court — Statements and speeches criticizing judgment of Supreme Court — Need to protect the dignity and integrity of the Supreme Court and High Court — Balance between right of freedom of speech and need to protect the dignity and integrity of Supreme Court in the interest of maintaining public confidence in the judiciary — Limits of reasonable courtesy and good faith — Local conditions — Courts of Judicature Act 1964, s 13 — Federal Constitution, arts 10 & 126

The Supreme Court on 27 April 1987 heard an appeal and gave judgment in respect of Supreme Court Appeal No 117 of 1986, *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors* v *Poh Swee Siang*.[1] Subsequently, the first and second respondents in the first application made press releases commenting on the judgment of the Supreme Court. Later, at a meeting organized by the Consumers Association, Penang and the Thean Teik Residents Association in Penang, the first, second and third respondents in the second application delivered speeches also criticizing the judgment. The applicants then sought an order to commit the respondent to prison for contempt of the Supreme Court pursuant to the provisions of O 52 of the Rules of the High Court 1980 read with s 13(1) of the Courts of Judicature Act 1964.

Held, finding the first and second respondents in the second application in contempt of court:

(1) In this country, there is a need to protect the dignity and integrity of the Supreme Court as well as of the High Court which is recognized by art 126 of the Federal Constitution and also by s 13 of the Courts of Judicature Act 1964. A balance must be struck between the right of freedom of speech as provided for in art 10 of the Federal Constitution and the need to protect the dignity and integrity of the Supreme Court in the interest of maintaining public confidence in the judiciary.

(2) It is established that whether a criticism of a judgment is within the limits of reasonable courtesy and good faith must depend on the facts of each particular case, and in determining the limit of reasonable courtesy, the court should not lose sight of local conditions.

(3) As the applicants had indicated that they did not intend to pursue the matter against the second respondent in the first application, he was discharged and cautioned to be careful in future not to sign any document in a language he did not understand.

(4) The language used by the first respondent in the first application might have been intemperate but it did not amount to contempt of court. He was also discharged.

(5) The speech of the third respondent in the second application could be interpreted in two ways, one according to the applicants' contention and the other according to the respondent's version. Bearing in mind that contempt proceedings are serious and quasi-criminal in nature, the court was not satisfied that the applicants had proved the case against the third respondent

beyond reasonable doubt. The benefit of the doubt should be exercised in his favour and he should be discharged.

(6) As for the first and second respondents in the second application, having read and considered their speeches and having regard to those speeches as a whole, the court could not say that they have not exceeded the bounds of reasonable courtesy or they were made in good faith. As advocates and solicitors, they are both officers of the court and are expected to uphold the dignity of the court and the respect for the judges. But they have ridiculed the Supreme Court. They have gone outside the two limits of reasonable courtesy and good faith and the court finds both of them guilty of contempt of court. They were each fined $5,000 or in default three month's imprisonment.

[Pada 27 April 1987 Mahkamah Agung telah mendengar rayuan dan memberi penghakimannya mengenai Rayuan Mahkamah Agung No 117/ 1986 *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors* v *Poh Swee Siang*.[1] Ekoran dari itu, responden pertama dan kedua di dalam permohonan pertama telah membuat kenyataan kepada akhbar memberi pendapat mereka mengenai penghakiman Mahkamah Agung itu. Selepas itu, dalam suatu perjumpaan Persatuan Pengguna, Pulau Pinang dan Persatuan Penduduk Thean Teik di Pulau Pinang, responden pertama, kedua dan ketiga di dalam permohonan kedua telah memberi ucapan membidas penghakiman itu. Pemohon-pemohon telah meminta perintah supaya responden-responden itu dipenjarakan kerana menghina Mahkamah Agung berdasar kepada Perintah 52 Kaedah Mahkamah Tinggi 1980 dibaca dengan s 13(1) Akta Mahkamah Kehakiman 1964.

Diputuskan, mendapati bahawa responden pertama dan kedua dalam permohonan kedua telah menghina mahkamah:

(1) Di dalam negara ini, adalah perlu untuk kemuliaan dan keutuhan Mahkamah Agung dan juga Mahkamah Tinggi dilindungi, seperti yang yang diiktiraf oleh Perkara 126 Perlembagaan Persekutuan dan juga oleh s 13 Akta Mahkamah Kehakiman 1964. Keseimbangan hendaklah dicapai antara hak kebebasan bercakap yang diberi di bawah Perkara 10 Perlembagaan Persekutuan dan keperluan melindungi kemuliaan dan keutuhan Mahkamah Agung demi kepentingan memelihara kepercayaan orang ramai terhadap badan kehakiman.

(2) Telah ditegaskan bahawa samada sesuatu kritikan penghakiman itu termasuk di dalam lingkungan budibahasa yang menasabah dan suci hati bergantung kepada fakta tiap-tiap kes tertentu, dan bagi menentukan sempadan budibahasa yang menasabah, mahkamah hendaknya jangan lupakan keadaan tempatan.

(3) Oleh kerana pemohon-pemohon telah memberitahu bahawa mereka tidak berniat meneruskan perkara ini terhadap responden kedua di dalam permohonan pertama, ia akan dilepaskan dan diberi amaran berjaga-jaga tidak akan menandatangani apa-apa dokumen yang ditulis di dalam bahasa yang tidak difahaminya.

(4) Bahasa yang digunakan oleh responden pertama di dalam permohonan pertama mungkin boleh dikatakan melampau akan tetapi ia tidak boleh disifatkan sebagai penghinaan mahkamah. Oleh kerana itu ia juga dilepaskan.

(5) Ucapan responden ketiga didalam permohonan kedua boleh ditafsirkan dengan dua cara, mengikut pendapat pemohon-pemohon atau mengikut pendapat responden. Memandangkan prosiding penghinaan adalah berat dan seakan-akan kesalahan jenayah sifatnya, mahkamah tidak berpuashati bahawa pemohon-pemohon telah membuktikan tuduhan terhadap responden ketiga hingga tidak ada keraguan yang menasabah. Faedah keraguan hendaklah diberi kepadanya dan ia dilepaskan.

(6) Setelah membaca dan menimbang ucapan-ucapan yang diberi oleh responden pertama dan kedua di dalam permohonan kedua dan setelah mempertimbangkan keseluruhan ucapan-ucapan itu, mahkamah tidak dapat mengatakan bahawa ucapan-ucapan itu tidak melampaui lingkungan budibahasa yang menasabah atau ia dibuat dengan suci hati. Sebagai peguambela dan peguamcara mereka adalah pegawi mahkamah dan mereka diharapkan mempertahankan kemuliaan mahkamah dan kehormatan kepada hakim-hakimnya. Sebaliknya mereka telah memperolok-olokkan Mahkamah Agung. Mereka telah keluar dari dua lingkungan budibahasa yang menasabah dan suci hati dan mahkamah berpendapat mereka telah salah melakukan penghinaan mahkamah. Mereka didenda $5,000 tiap-tiap seorang atau tiga bulan penjara jika mereka ingkar.]

Cases referred to

1 *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors* v *Poh Swee Siang* [1987] 2 MLJ 611 (refd)
2 *A-G & Ors* v *Arthur Lee Meng Kuang* [1987] 1 MLJ 206 (folld)
3 *R* v *Gray* [1900] 2 QB 36 (refd)
4 *Ambard* v *A-G for Trinidad & Tobago* [1936] AC 322 (refd)
5 *R* v *Commissioner of Police of the Metropolis, ex p Blackburn (No 2)* [1968] 2 QB 150 (refd)
6 *PP* v *The Straits Times Press Ltd* [1949] MLJ 81 (refd)
7 *PP* v *SRN Palaniappan & Ors* [1949] MLJ 246 (refd)
8 *Lim Kit Siang* v *Datuk Seri Dr Mahathir Mohamad* [1987] 1 MLJ 383 (distd)

Legislation referred to

Courts of Judicature Act 1964 s 13(1)
Federal Constitution art 126
Rules of the High Court 1980 O 52

C Abraham (*R Rajasingam* and *JA Yeoh* with him) for the applicants in both applications.

GS Nijar (*M Thayalan* with him) for the first and second respondents in the second application and the first respondent in the first application.

LC Loh (*Ms*) for the second respondent in the first application.

RJ Manecksha for the third respondent in the second application.

Cur Adv Vult

Abdul Hamid LP (delivering the judgment of the court): There are two applications before this court, first, Mahkamah Agung Permohonan Sibil No 12 of 1987 ('first application') between the trustees of Leong San Tong Khoo Kongsi and two others, the applicants, and SM Idris and Ooi Chan Seong, the respondents; secondly, Mahkamah Agung Permohonan Sibil No 22 of 1987 ('second application') between the trustees of Leong San Tong Khoo Kongsi and two others, the applicants, and Mohideen Abdul Kader and three others, the respondents.

The events leading to these proceedings were that on 27 April 1987 the Supreme Court heard an appeal and gave judgment in respect of Supreme Court Civil Appeal No 117 of 1986 *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors* v *Poh Swee Siang*.[1]

On the following day, SM Idris, the first respondent in the first application, issued a statement to the press entitled 'Supreme Court decision may lead to lawlessness'. On the same day, Ooi Chan Seong, the second

respondent in the first application, issued a press release entitled 'Supreme Court decision has grave implications - Say Thean Teik Farmers'. Ten days later on 5 May 1987, at a meeting organized by the Consumers' Association, Penang and the Thean Teik Residents Association at the Penang Chinese Town Hall, the first, second and third respondents in the second application delivered speeches exhibited in the record of appeal at pp 90 to 92 (translation pp 93 to 95), pp 96 to 97 (translation pp 98 to 99) and pp 100 to 101 (in English translation).

Leave in respect of the first application and the second application were obtained on 14 May 1987 and 29 February 1988 respectively and an order for consolidation was made on 30 March 1988.

The applicants have sought an order of this court to commit the respondents to prison for contempt of the Supreme Court pursuant to the provisions of O 52 of the Rules of the High Court 1980 read with s 13(1) of the Courts of Judicature Act 1964.

We would state orally and briefly the grounds of decision in these consolidated Supreme Court Civil Application Nos 12 and 22 of 1987 which we heard on Thursday.

This court had the opportunity in April 1986 in *AG & Ors* v *Arthur Lee Meng Kuang*[2] to consider and discuss the law relating to contempt of court in which relevant authorities including *R* v *Gray*;[3] *Ambard* v *AG for Trinidad & Tobago*;[4] *R* v *Commissioner of Police of the Metropolis, ex p Blackburn (No 2)*;[5] *PP* v *The Straits Times Press Ltd*[6] and *PP* v *SRN Palaniappan & Ors*[7] were referred and considered. It is not necessary for us on this occasion to consider those authorities again except to reiterate what has been said in those cases that in this country there is the need to protect the dignity and integrity of the Supreme Court as well as the High Court which is recognized by art 126 of the Federal Constitution and also by s 13 of the Courts of Judicature Act 1964. In consideration, a proper balance must be struck between the right of freedom of speech as provided for in art 10 of the Federal Constitution and the need to protect the dignity and integrity of the Supreme Court in the interest of maintaining public confidence in the judiciary. In the light of these authorities, it is established, inter alia, that whether a criticism of a judgment is within the limits of reasonable courtesy and good faith must depend on the facts of each particular case and in determining the limit of reasonable courtesy the court should not lose sight of local conditions.

Mr Nijar, counsel for the first respondent in the first application and for the first and second respondents in the second application, has however referred to *Lim Kit Siang* v *Datuk Seri Dr Mahathir Mohamed*[8] which was also decided by this court and has urged us to follow the decision of that case which he submitted adopted a liberal approach. In that case, this court viewed the excerpt complained of objectively and dispassionately and came to the conclusion that it was an articulation of executive frustration in not being able to achieve its object in matters where the interference of the court have been sought to some avail. The court, however, held that the excerpt complained of did not amount to an attack on the courts as to constitute a contempt but only stemmed from a misconception of the role of the courts. We do not agree that the law of contempt has been changed as a result of the decision of this court in the case, the facts of which are very different from the case which is before us.

As regards the first application, the applicants had indicated that they did not intend to pursue the matter against Ooi Chan Seong, the chairman of Persatuan Penduduk-Penduduk Kawasan Thean Teik and Kampong Pisang (the second respondent). He was therefore discharged and cautioned by us to be careful in future not to sign any document in a language which he did not understand.

The first respondent in the first application, one SM Idris, had issued a press release dated 28 April 1987, in his capacity as president of the Consumers' Association of Penang. The applicants have contended that the statement was a great distortion of the decision of the Supreme Court. They have suggested that the statement contained various inferences, namely, that the Supreme Court had acted irresponsibly, had turned a blind eye and condoned the killing of a woman and thirdly had sanctioned the land owners' disrespect and abuse of the legal process and lastly that the decision was a charter for lawlessness. We have read and studied that press statement in its entirety but are unable to accept that it gave rise to those inferences suggested by the applicants. The language used might have been intemperate but in our view it did not amount to contempt of court. We have also considered what has been canvassed by Mr Nijar in the context of his subsequent conduct urging the Federal Government, the Penang State Government and Members of Parliament on the need for reforming the tenancy laws and/or the need for the enactment of an Act which would provide, inter alia, for tenants to be evicted by landlords only after they have obtained a court order. For the reason we have stated, we would therefore discharge him too.

In the case of the second application, there were originally four respondents but we were informed by Mr Abraham, counsel for the applicants, that the application against the fourth respondent, one Khor Kok Peng, had been withdrawn.

We would first proceed to consider the case against Chin Nyuk Soo, the third respondent, who made a speech in Hokkien. It was a long speech and the only part of his speech which has been alleged to amount to contempt was

his reference to a Chinese saying that 'money can make a ghost turn the grinder'. The applicants have contended that the inference from that part of the speech suggested that the Supreme Court judges might have been influenced by financial considerations and were susceptible to corruption. The late Tan Sri Lee Siow Mong was asked by the applicants' counsel to give his opinion on that phrase. The late Tan Sri Lee had traced the history of that Chinese saying and has stated that it was meant to be innuendo deprecating in nature and having a connotation of corrupt practices. The third respondent had averred in his affidavit that he did not mean that the Supreme Court judges were corrupt and it was quite clear from what followed after his reference to the Chinese saying when he said 'after the Penang High Court judgment the Supreme Court in Kuala Lumpur held a different view over Poh Sim Siang's case. They reviewed this case from the legal point...'

Reading the English translation, we are of the view that it is possible for that part of his speech to be interpreted in two ways. One inferrence would be according to the applicants' contention and the other according to the respondent's version. Bearing in mind that contempt proceedings are serious and quasi-criminal in nature, we are not satisfied that by reason only of that part of the speech the applicants have proven the case against the third respondent beyond reasonable doubt. There is a doubt and the benefit of the doubt is exercised in his favour. Accordingly, we also discharge him.

The position of the first and second respondents, namely, Mr Mohideen Abdul Kader and Miss Meenakshi Raman, in the second application, are different. They are both advocates and solicitors and should know the law. The first respondent applied to give evidence in court. In his speech he said that the main thrust of his speech at the Penang Chinese Town Hall and criticism of the English common law which empowered the landlord to go and take possession of the land occupied by a tenant by using reasonable force without having to go to court to obtain an order. He had no intention of disparaging the Supreme Court. Although Miss Meenakshi Raman, the second respondent, had earlier indicated that she was going to give oral evidence, she decided not to do so as her evidence would be the same as that of the first respondent.

We must now refer to the following relevant parts of the first respondent's speech:

> Saya yakin saya tahu bahawa rakyat Thean Teik mahu selesai masalah ini secara aman. Tapi adakah 'developer' pemaju, tuan tanah mahu selesai ini secara aman? Mr Poh bila dia tengok bulldozer, dia ingat boleh pergi mahkamah dapat keadilan. *Dia mimpi dia boleh dapat keadilan daripada mahkamah.*
>
> Dia pergi ambil 'order' tahan sama dia developer jangan masuk. Bicara-bicara bukan satu bulan, 11 bulan bicara. Banyak saksi keluar. Hakim kasi dia $300,000 mula-mula. Itu Farlim tidak puashati, *dia 'appeal'. Appeal itu tiga hakim dengar; bukan dia mahu kasi lebih, dia potong sampai $20,000. Dan dia cakap, dia cakap, dalam Malaysia tuan tanah bila dia sudah kasi notis, dia boleh pergi sendiri tak payah pergi court. Tak tahu apa pasal kita ada court? Tak tahu apa pasal kita bayar gaji kasi hakim-hakim.* Dia cakap itu tuan tanah sendiri boleh pergi. Bukan dia satu orang mahu pergi. Tuan tanah mesti bawa samseng-samseng dia masuk dalam rumah. Angkat barang kita boleh buang. Kasi kita keluar dari tanah atau rumah. *Ini undang-undang banyak jahat punya undang-undang...* Siapa saja sewa tanah, sewa office, sewa bilek, *semua orang kena ini undang-undang syaitan ini ...*
>
> Ini undang-undang kita ada undang-undang sini ada tulis dalam undang-undang, undang-undang tulis. Ini Parliament bikin punya undang-undang. *India pun ada itu macam punya undang-undang. India punya court banyak tinggi punya court. Itu Supreme Court.* Dia cakap itu tuan tanah, dia mesti mahu pergi mahkamah, mahu dapat keluar itu perintah baru boleh kasi keluar semua itu orang sewa. *Tapi kita punya hakim tiga orang, banyak pandai punya orang, dia tak mahu ikut. Dia tak mahu itu cara.* (The emphasis is ours.)

The applicants say that the inferences are that the court had acted recklessly and irresponsibly and that it was an abuse of the process of the court. There was also a suggestion that the Supreme Court judges were prejudiced, not gainfully employed and have not discharged or are in dereliction of their judicial duties and irresponsible. There was also the suggestion that our judges lack maturity, are inferior, incapable and have not kept up with the best standard of the judges of the Indian Supreme Court.

The second respondent had also issued a speech in Bahasa Malaysia on the same day as follows:

> Seperti, seperti kita ada tengok dahulu, ini undang-undang banyak bodoh *punya undang-undang. Bukan sahaja dia bodoh, dia tak adil.* Ini hakim ada cakap ini macam, dia cakap orang-orang tuan tanah tak payah ikut law. Dia cakap itu boleh pergi tempat kasi ini orang keluar, dia cakap tak payah ikut law...
>
> ...Itu bukan undang-undang. Jadi kita yang jadi lawyer, kita pun ingat apa kita belajar undang-undang? *Buat apa kita mahu hakim-hakim yang dia orang kata pandai-pandai. Tapi dia pandai-pandai macam ini bikin undang-undang bodoh-bodoh.* (The emphasis is ours.)

The applicants say that the inferences are that the Supreme Court decision was stupid, meaningless and that the Supreme Court sanctioned the lawlessness and disregard of the legal process. There was also the inference or suggestion that the Supreme Court judges advocate lawlessness and are reckless and irresponsible.

Mr Nijar for both the first and second respondents contended that the statements were meant in the public interest and in good faith. He conceded that the language used was not judicious but stated that criticisms could not be contempt. He also stated that the whole decision was not criticized as there were only four issues in it and they only spoke on that relating to self-help. He submitted that

an abuse must be distinguished from criticism and that any judgment could be criticized as contrary to law and that criticism was not contempt. He also stated that if a person was performing a public duty he was protected and that speeches here were made bona fide. He submitted that the court should have the magnanimity to excuse intemperate language. He also pointed out that both speakers were using a language with which they not comfortable with.

We have read and considered the speeches of both the first and second respondents and having regard to those speeches as a whole we cannot say that they have not exceeded the bounds of reasonable courtesy or were made in good faith. As advocates and solicitors they are both officers of the court and are expected to uphold the dignity of the court and the respect for the judges. But they have ridiculed the Supreme Court. We find that the first and second respondents had gone outside the two limits of reasonable courtesy and good faith. The blatant insinuations made by them had scandalized the Supreme Court and brought it into disrepute as they were not within limits of reasonable courtesy and good faith. We find that the applicants have proven their case against them beyond reasonable doubt and we find both of them guilty of contempt of this court.

Finally we must say that the court should seriously consider custodial sentence in such cases and hereby warn that in future custodial sentence might be imposed. However, in the circumstances of this case, we would follow the decision of this court in *A-G & Ors* v *Arthur Lee Meng Kuang*[2] and impose a fine of $5,000 or in default three months' imprisonment on the first and second respondents. We also order that the first and second respondents should pay the costs of this application to the applicants.

As regards costs, we hereby order that in respect of the first application costs should follow the event. And in respect of the second application, costs for the third respondent should follow the event.

Order accordingly.

Solicitors: *Shearn Delamore & Co; Meena Rajes & Partners; LC Loh & Co; Ong & Manecksha.*

Reported by *Prof Ahmad Ibrahim*

Government of Malaysia v VR Menon

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 172 OF 1987
ABDUL HAMID LP, HASHIM YEOP A SANI CJ (MALAYA), LEE HUN HOE CJ (BORNEO), MOHAMED AZMI AND MOHAMED YUSOFF SCJJ
27 DECEMBER 1989

Constitutional Law — Pensions — Right to equality — Protection of pension rights — Pensions Adjustment Act 1980, s 1(2) — Federal Constitution, arts 4(1), 8(1) & 147

Public Servants — Pensions — Right to additional benefits — Provision giving additional benefits to pensioners resident in Malaysia only — Pensions Adjustment Act 1980, s 1(2) — Federal Constitution, arts 4(1), 8(1) & 147.

The Pensions Adjustment Act 1980 ('the Act') made provisions for additional benefits to pensioners and their dependants. Foreign resident pensioners were however excluded by s 1(2) of the Act which provides that the Act shall apply throughout Malaysia in respect of retired officers and their dependants 'who are resident in Malaysia'. The respondent is an Indian citizen residing in Madras, India. He is a pensioner receiving pension from the Malaysian government and he is aggrieved by the residential qualification imposed by s 1(2) which excludes him and his dependants from the additional benefits conferred by the Act. He brought an action against the government of Malaysia seeking a declaration that he be paid his pension in accordance with the Act as any other resident pensioners in Malaysia and for other consequential reliefs. The learned trial judge gave judgment for the respondent (see [1987] 2 MLJ 642) as he held that the provision in s 1(2) of the Act which restricts the application of the Act to residents in Malaysia is void and of no effect. The appellant appealed.

Held, allowing the appeal:

(1) There can be no doubt that s 1(2) of the Pensions Adjustment Act 1980 is discriminatory against foreign-resident pensioners but the classification between foreign and local resident-pensioners is founded on an intelligible differentia and has a rational nexus with the object to be achieved by the 1980 Act which is to ameliorate the financial position of pensioners in Malaysia due to the depreciating value of the ringgit and the rise in the cost of living in Malaysia.

(2) The residential qualification imposed by the Act constitutes a permissible discrimination and therefore does not violate the equality provision of art 8(1) and as such it is not null and void under art 4(1) of the Federal Constitution.

(3) The provision of art 147(1) of the Federal Constitution guarantees the additional pension benefits to the respondent only if the 1980 Act is applicable to him. Since it is not applicable to him, that would be an end of the matter.

[Akta Penyelarasan Pencen 1980 telah membuat peruntukan memberi faedah tambahan kepada pesara dan tanggungan mereka. Akan tetapi pesara yang duduk di luar negeri telah disingkir oleh s 1(2) Akta itu yang memperuntukkan bahawa Akta itu hendaklah dipakai diseluruh Malaysia bagi pegawai yang telah bersara dan tanggungan mereka 'yang bermastautin di Malaysia'. Responden di dalam kes ini ialah warganegara India yang bermastautin di Madras, India. Ia adalah pesara yang menerima pencen dari kerajaan Malaysia dan ia tersinggung oleh syarat kemastautinan yang dikenakan oleh s 1(2) yang menyingkirkan-